

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16793
[Redacted]	)	
Petitioner.	)	DECISION
	)	
	)	

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This case arises from a timely protest of a State Tax Commission staff (staff) decision adjusting property tax reduction benefits for 2002. An informal conference was held on September 5, 2002. [Redacted] Tax Commissioner [Redacted], and [Redacted], Tax Appeals Specialist, were in attendance at the meeting. The State Tax Commission has reviewed the file and makes its decision.

The amount of property tax reduction benefits depends on the income received by a claimant and the claimant's spouse--the greater the income, the smaller the benefit. [Redacted] (petitioner) filed a property tax reduction application on or about April 2, 2002. The staff routinely audits the applications that have been submitted to the county where the petitioners live. During this process, the staff examined the petitioner's application and the attached documents.

The staff notified the petitioner of the intent to deny her benefits for 2002 because the income amount did not appear to be complete. The petitioner's application for the benefit and her income tax return showed the petitioner as a married woman. However, she had not included her husband's income in her total net income.

The petitioner answered the notice of intent to deny her benefits by writing a letter of protest. In the letter, she explained that her husband has lived and worked in [Redacted] for the last 17 years.

She said she owns the mobile home and land as her separate property, and her husband contributes nothing toward her living expenses. The petitioners' file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-701 uses a series of definitions to state the requirements for qualifying to receive property tax reduction benefits. Idaho Code § 63-701 states in pertinent part effective January 1, 2002:

**63-701. DEFINITIONS.** – As used in this chapter:

(1) **"Claimant" means a person who has filed a claim** under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year in which the claim was filed a claimant must be an owner of a homestead and be:

- (a) Not less than sixty-five (65) years old; or
- (b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or
- (c) A widow or widower; or
- (d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or
- (e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or
- (f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or
- (g) Blind.

(2) **"Homestead" means the dwelling, owner-occupied by the claimant** as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use

of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) **"Household" means the claimant and the claimant's spouse.**

The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) **"Household income" means all income received by the claimant and, if applicable, the claimant's spouse, in a calendar year.** (Emphasis added.)

At the conference, the petitioner and her daughter expressed their belief that it would be incorrect to include the petitioner's husband's income as income to her when he provides no financial assistance to her. They explained that he comes down to visit the grandchildren a couple of times a year and even stops over to see the petitioner's dog but does not stay with the petitioner. They emphasized the fact that the petitioner's mobile home and property are in the petitioner's name alone. They contended that the petitioner's household cannot include her husband because he does not live with her.

The section of Idaho Code providing for property tax reduction benefits uses definitions to state eligibility and income requirements. These definitions are not the same definitions used in other sections of Idaho Code or even in the common dictionary. However, the definitions are very specific. The law must be followed as written. If it is socially or economically unsound, the power to correct it is legislative, not within the powers of the Tax Commission. John Hancock Mutual Life Insurance Co. v. Neill, 79 Idaho 385, 319 P.2d 195 (1957).

In the present case, the petitioner filed a claim. She is the claimant. The household is defined as the claimant and the claimant's spouse. No reference is made in the code as to where the

spouse lives. Household income is defined as the income received by the claimant and, if the claimant has a spouse, the claimant's spouse. The code makes no reference to suggest the separate income of a spouse living outside of the dwelling should not be included in the income to be considered when granting the property tax reduction benefit.

Idaho is a community property state, which means the assets and liabilities of a married couple belong to the marriage community. The petitioner has choices with regard to her husband's income. Idaho laws provide for separate maintenance when married couples live apart. The petitioner has chosen not to seek assistance with her living expenses from her husband.

Without complete income information, the Tax Commission must deny the petitioner's property tax reduction benefits for 2002.

The State Tax Commission is aware there is some potential this decision could cause a hardship to the property tax reduction applicant in certain circumstances. The proper jurisdiction to handle such hardship situations falls with the county commissioners pursuant to Idaho Code § 63-711.

WHEREFORE, the decision of the State Tax Commission staff is hereby APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

### **CERTIFICATE OF SERVICE**

I hereby certify that I have on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]